

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI

In Re:

American Heavy Engine, LLC
aka 2nd Chance Diesel, LLC,

Debtor.

970 Premier Drive
Suite A
Kearney, MO 64060

EIN: xx-xxx0304

Case No. 23-40702-btf7
Chapter 7

**APPLICATION FOR ATTORNEY FEES IN EXCESS OF THE NO LOOK FEE
AND REVIEW OF THE REASONABLENESS OF SUCH FEE ARRANGEMENT
PURSUANT TO §329 AND FRBP 2017**

COMES NOW Sader Law Firm, LLC by and through Neil S. Sader, and for its Application for Attorney Fees in Excess of The No Look Fee and Review of the Reasonableness of Such Fee Arrangement Pursuant to §329 and FRBP 2017 states to the Court as follows:

INTRODUCTION

Sader Law Firm files this Application in compliance with Local Rule 2016-1, 11 U.S.C. §329, and Fed. R. Bankr. P. 2017. Sader Law Firm asserts that a No Look Flat Fee for its services in this case is not appropriate given the uncertainty of the amount of work the case will generate. SLF and the Debtor have entered into a Legal Services Agreement providing for a maximum payment of \$15,000.00 which is intended to include filing fees and expenses. SLF intends to track its time in this matter on an hourly basis in order for the Court to later determine the reasonableness of the Fee paid. SLF received the amount

of \$15,000.00 in February of 2023 and placed it in its Trust account. SLF requests the Court allow it to pay from the Trust funds the amount of earned fees up to \$7,500.00 upon approval of this Application. Thereafter, SLF will file another Final Fee Application to be paid the remainder also based on earned fees.

BACKGROUND

The case before this Court involves a diesel repair shop in Kearney, Missouri. The owner of the Debtor acquired the diesel repair shop from its prior owner in March of 2022. The owner also operates a separately owned Truck part warehouse in the state of Michigan. The two entities were separately owned and not affiliated with each other in any way other than having a common owner. That entity, Atlas Heavy Engine Co. dba Worldwide Diesel filed for a Subchapter V, Chapter 11 in the Western District of Michigan on March 23, 2023 as case 23-00530-swd. In this case, the Debtor assumed secured loans with Legacy Bank & Trust of Springfield, Missouri and thereafter received additional loans from the Bank on its own. After receiving numerous Bank notices and demands, and due to covid related issues concerning employee retention, supply chain issues and inflation, the Debtor chose to close down operations on about March 1, 2023. The Bank took possession of the formerly operated facility and the equipment, vehicles and bank accounts at Legacy Bank & Trust. SLF was retained in early February of 2023 and assisted with the close-down and dealings with the Bank during this time. There was significant communications and negotiations to ensure a smooth close-down. Thereafter, SLF has worked with the owner and its creditors to obtain information for the schedules.

Debtor's debts include trade debts, warranty claims, Bank claims and the claims of the former owner who provided wrap-around financing. Debtor understands that no

discharge will be entered, however, believes the process of having a Trustee review the assets and distribute any such assets deemed unsecured, would be of benefit to creditors, along with assuring them that assets have been disposed of in an appropriate manner.

11 U.S.C. §329 AND FED. R. BANKR. P. 2017

1. Local Rule 2016-1 requires an attorney for a debtor to file a separate application for the Court's approval when their attorney fees exceed \$4,100.00 for a below median income case or \$4,600.00 for an above median case.
2. 11 U.S.C §329 of the Bankruptcy Code states that "If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive..." The 8th Circuit held that "§329 is about disclosure and reasonableness of attorney fees and governs the fee arrangements between a debtor and the attorney representing the debtor." *Schroeder v. Rouse (in re Redding)*, 247 B.R. 474, 478 (8th Cir. BAP 2000).
3. "The test under § 329 measures reasonable value of the services provided by the attorney." *Id.*
4. The Court should consider the customary legal fees in the legal community and the added complexity of the case. *See Snyder v. Dewoskin (in re Mahendra)*, 131 F.3d 750, 758 (8th Cir. 1997).

SERVICES PERFORMED AND ANTICIPATED SERVICES

5. Debtor retained the Sader Law Firm on February 2, 2023. During his initial consultation and subsequent review of the case the Sader Law Firm determined that the case warranted to be charged on an hourly fee basis given the need to handle the various matters associated with the case. Initially it was even thought that case may be handled as

a Subchapter V or Chapter 11 case. However, as the working of the case proceeded, and as corporate paperwork was reviewed, it was determined that a Chapter 7 would be filed. SLF ultimately determined that the matter could be handled for an amount not to exceed \$15,000.00. Accordingly, among the issues of this case which merit fees in excess of the Flat Fee and is the basis for charging on an hourly fee basis are the following:

- a. Debtor initially had SLF review the ability of the case to be filed as a Chapter 11;
- b. SLF was then asked to deal with the secured lender which was threatening legal action in order to foreclose on the business or otherwise obtain its collateral. There was significant communication and negotiation prior to the business closing in an effort to have certain paid-for engines shipped to their owners and to allow the business to shut down in as close to an orderly manner as possible. Despite the Bank being provided the remaining collateral, SLF was able to negotiate with the Bank counsel try to assist customers as much as possible;
- c. SLF worked with the Debtor to ensure final tax filings were made and employees paid prior to closing;
- d. SLF was also called on to deal with a situation with the former business owner who the current owner purchased the business from in 2022. That alleged creditor attempted through some self-help means to obtain assets he was not entitled to. Additionally, his manner of self-help was seen as inflammatory and potentially dangerous. Counsel assisted in resolving that situation;
- e. SLF has communicated through emails and phone calls with numerous creditors over the last two (2) plus months to advise them as to the whereabouts of

any equipment they may have left with the Debtor to be worked on and put them in touch with Bank. There are in excess of 50 unsecured creditors in addition to a secured creditor;

f. SLF has worked with the Debtor to put together schedules of assets, debts, lists of inventory and other required information such as bank statements;

g. Counsel anticipates that the Trustee will have substantial requests for financial information which will require significant attorney time to present and respond to thoroughly;

h. SLF also expects there will be substantial information sought by the Trustee concerning the value of assets, security interests and whether there were any transfers or preferences. To the extent it can be helpful, Counsel will do so; and,

i. SLF will be expected to file all appropriate bankruptcy schedules, pleadings and respond to all motions etc. on behalf of the Debtor as necessary and counsel Debtor throughout the proceeding.

6. Counsel Sader states that said case may present issues which based on his experience call for considerable judgment and review to obtain a satisfactory result and fully inform the client.

7. Sader Law Firm intends to track its time at the following hourly rates for this Chapter 7 matter and any associated litigation (these are the Firm's Standard Hourly Rates), billed in increments of one-tenth of an hour, with such rates being subject to adjustment from time to time:

Neil S. Sader, Managing Member	\$335.00
Associate Attorneys	\$225.00 - \$290.00

Connie S. Montemayor, Paralegal	\$125.00
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From time to time as deemed appropriate, undersigned counsel intends to use other attorneys and staff who will bill at lower rates than those disclosed above.

8. Counsel states that no fees have been charged in association with the preparation of this Fee Application and the Debtor forwarded the entirety of the advance fee pre-petition. Counsel is currently holding the entirety of the payment in its Trust Account. Debtor was further made aware of the advance fee nature of the payment and that the matter will be billed on an hourly basis up to the maximum of \$15,000.00.

9. Counsel indicates that the above services have or will be of substantial benefit to Debtor.

10. There shall be no attorney fees paid by the Chapter 7 Trustee as an administrative expense.

11. In addition to the Attorney's fees paid by the Debtor, the Debtor may have opted to use a debit card to pay his fees, which results in transaction fees from the card servicer. Debtor was made aware of the approximately 3% transaction fees imposed by the card servicer and decided to use an electronic payment.

12. Given the issues and facts involved in this Case, the Sader Law Firm respectfully submits that its engagement and the fee arrangement described herein are more than reasonable, meet and comply with the high standards of this Court and should be approved.

13. Counsel for the Debtor requests that SLF be allowed to pay its earned fees from the money held in its Trust account in the following manner:

- a. SLF shall keep track of its time on an hourly basis and upon this Application being granted, and issuing the Debtor an invoice, shall be entitled to pay up to \$7,500 towards its earned fees;
- b. Upon filing either an Interim or Final Application for Fees, SLF shall be entitled to a maximum of another \$7,500.00 in compensation for earned fees.
- c. Any time incurred in excess of the \$15,000.00 shall not be compensated; and
- d. Prior to this Case Closing, SLF shall file a Final Application for Approval of Fees for the Court's review and approval.

WHEREFORE, Counsel for Debtor respectfully requests this Court allow this matter to be paid on the following basis: 1) Counsel shall be entitled to a Fee Beyond the No Look Fee; 2) SLF shall keep track of its time on an hourly basis in this case and upon this Motion being granted and the Debtor issuing Debtor an invoice, shall be entitled to transfer up to \$7,500.00 toward its earned fees; 3) upon filing either an Interim or Final Application for Fees SLF shall be entitled to a maximum of another \$7,500.00 in compensation for earned fees. Any time incurred in excess of that amount shall not be compensated. Prior to the case closing, Counsel shall file a Final Application for Approval of Fees. SLF shall be allowed to retain the advance fees in its Trust account pending this Court's approval of this motion and its Order, and any other Orders this Court deems just and proper.

Respectfully submitted,

SADER LAW FIRM, LLC

By: /s/ Neil S. Sader

Neil S. Sader, MO 34375
2345 Grand Boulevard, Suite 2150
Kansas City, Missouri 64108
816-561-1818
Fax: 816-561-0818

ATTORNEYS FOR DEBTOR

NOTICE OF APPLICATION FOR COMPENSATION

PLEASE TAKE NOTICE THAT WITHIN TWENTY-ONE (21) DAYS AFTER THE DATE OF THIS NOTICE you must file and serve a written objection to the motion. The objection must be filed electronically with the Bankruptcy Court at www.ecf.mowb.uscourts.gov. If you are a pro se creditor, you may file a written objection with the Clerk, United States Bankruptcy Court, Western District of Missouri, 400 E. 9th Street, Room 1510, Kansas City, MO 64106. Debtor's attorney and trustee will receive electronic notice when the objection is filed. If the Debtor is pro se, you must serve your objection on the Debtor.

IF YOU FAIL TO FILE A TIMELY OBJECTION, THE MOTION MAY BE GRANTED BY THE COURT WITHOUT A HEARING. The court may grant the motion without a hearing if the objection filed states inadequate grounds for denial.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Application for Attorney Fees in Excess of the No Look Fee and Review of the Reasonableness of Such Fee Arrangement was served, in addition to the parties notified by US Bankruptcy Court's electronic notification system, upon the U.S. Trustee and the Chapter 7 Trustee at the email addresses below, and the attached matrix via U. S. First Class Mail, postage prepaid, this 23rd day of May 2023.

U.S. Trustee – adam.e.miller@usdoj.gov

USTP.Region13.KC.Fees@usdoj.gov

Jill Olsen – jill@olsenlawkc.com

/s/ Neil S. Sader

Neil S. Sader, Attorney

Label Matrix for local noticing

0866-4

Case 23-40702-btf7

Western District of Missouri

Kansas City

Thu May 25 12:26:54 CDT 2023

2nd Chance Diesel LLC

970 Premier Drive

Kearney, MO 64060-7925

2nd Chance Diesel LLC

970 Premier Drive

Mendon, MO 64660

ADT

3190 S. Vaughn Way

Aurora, CO 80014-3512

Ace Imagewear Uniforms

4120 Truman

Kansas City, MO 64127-2238

Acuity

2800 South Taylor Drive

Sheboygan, WI 53081-8474

Alt Diesel Inc.

8350 Bee Ridge Rd. #336

Sarasota, FL 34241-6312

American Equity Funding, Inc.

7005 Alma Highway

Van Buren, AR 72956-7227

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Washington, DC 20530-0001

Big Bear Engine Co.

18540 Apache Drive, #160

Parker, CO 80134-4141

Borko Ijacic

4417 N. Narragansett Ave.

Chicago, IL 60630-3027

Brown & Joseph LLC

1 Piedrce Place, Suite 70W

Itasca, IL 60143-2606

Central Power Sys & Services

9200 Liberty Drive

Liberty, MO 64068-9396

Clarksville Stave & Lumber Company

2808 Jasper Road

Xenia, OH 45385-9425

(c)CLAY COUNTY BUSINESS PROPERTY TAX

1 COURTHOUSE SQ

LIBERTY MO 64068-2365

Consolidated Communication

2116 S. 17th Street

Mattoon, IL 61938-5973

Cross J Investment, LLC

405 Sam Barr Drive, Suite 104

Kearney, MO 64060-9148

Crying Hearts Specialized

Mr. Ronald Bragg

7028 Roundtable Court

Smyrna, GA 30080-5735

Custom Truck One Source

P.O. Box 773385

Chicago, IL 60677-0923

DTIS

15770 Slover Avenue

Fontana, CA 92337-7389

Devine Farms, Inc.

c/o Mr. Richard Devine

574 NW 170th Street

Saint John, KS 67576-8679

Diesel Kings/Big Bear Engine

c/o Mr. John Leonard

1801 California Street, Suite 2600

Denver, CO 80202-2645

Eagle Transportation LLC

14645 S. Mallet Street

Olathe, KS 66062-8864

Erin Campbell

720 Peebles Ave.

Morgan Hill, CA 95037-9024

Eurotrans, LLC

575 Rudder Road, Suite 102

Fenton, MO 63026-2005

Expressway Logistics

600 Marion Road

Columbus, OH 43207-2551

FedEx

P.O. Box 94515

Palatine, IL 60094-4515

Iron Horse Express
c/o Mr. Paul Schmoker
8888 Kenyon Blvd.
Faribault, MN 55021-8058

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Louisburg, NC 27549-9782

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Springfield, MO 65807-5355

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Kansas City, MO 64120-1944

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4894 W. Lone Mountain Road
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Las Vegas, NV 89130-2239

Motor Driven
PO Box 281793
Atlanta, GA 30384-1793

Moving Out
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Saint Petersburg, PA 16054-0097

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Springfield, MO 65804-4880

Mr. John Leonard
Fairfield and Woods
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Denver, CO 80202-2645

Nextran Truck Centers
3915 N.E. Randolph Road
Kansas City, MO 64161-9383

Nolands Cylinder Head Service
1519 Charlone
Kansas City, MO 64108-1525

O'Reilly Auto Inc.
P.O. Box 9464
Springfield, MO 65801-9464

PAI Industry
P.O. Box 935437
Atlanta, GA 31193-5437

PAI Industry
c/o Ms. Sherry Figuero
2121 Airline Drive, #520
Metairie, LA 70001-5987

Penske Trucking
c/o Mr. Song Gao
498 Bussen On the Ground Road
Saint Louis, MO 63129-3867

Platte Clay Electric Coooperative
1000 W Highway 92
Kearney, MO 64060-8682

Premier Casting and Machine
2118 Industrial Drive
PO Box 1183
Mcpherson, KS 67460-1183

(p) PREMIER TRUCK GROUP
ATTN NONE
4200 PORT BLVD
DALLAS TX 75241-7637

Premier Truck Group of Kansas City
8001 Parvin Road
Kansas City, MO 64161-9525

RelaDyne Western Marketing Inc.
P.O. Box 954523
Saint Louis, MO 63195-4523

Richard Campbell
720 Peebles Ave.
Morgan Hill, CA 95037-9024

Rottler
8029 South 200th Street
Kent, WA 98032-1194

Steve Hardy
Old US 31 Niles
Niles, MI 49120

T & A Truck Service
6803 Ward Road
Millington, TN 38053-7433

T.B.B. Properties LLC
1063 Couchman Drive
Kearney, MO 64060-7971

Troppito Miller Griffin, LLC
105 East 5th Street, Suite 500
Kansas City, MO 64106-1118

(p)UNITED STATES ATTORNEY'S OFFICE
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KANSAS CITY KS 66101-2400

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KANSAS CITY MO 64106-2637

(p)SBA
DISTRICT COUNSEL KANSAS CITY
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SUITE 1500
ST LOUIS MO 63102-2755

Vander Haag's, Inc.
3809 4th Avenue W.
Spencer, IA 51301-2082

Wagner's Septic and Transport Service
127 E. Washington St.
Gardner, KS 66030-1210

Welds Supply Inc.
5654 NW Riverpark Drive
Riverside, MO 64150-9301

Worldwide Diesel
1515 N. Old US 31
Niles, MI 49120-1165

YRC Freight
P.O. Box 93151
Chicago, IL 60673-3151

(p)BMS JILL D OLSEN
118 N CONISTOR LN SUITE B290
LIBERTY MO 64068-1957

(p)NEIL S SADER
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SUITE 2150
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Premier Truck Group
P.O. Box 840827
Dallas, TX 75284-0827

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Kansas City, KS 66101

U.S. Attorney, WDMO- Bankruptcy
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Kansas City, MO 64106

U.S. Small Business Administration
1000 Walnut Street, Suite 500
Kansas City, MO 64106-2156

Jill D. Olsen
The Olsen Law Firm, LLC
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Liberty, MO 64068

Neil S Sader
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Kansas City, MO 64108-2663

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d) 2nd Chance Diesel, LLC
970 Premier Drive
Kearney, MO 64060-7925

(d) Erin Campbell
720 Peebles Avenue
Morgan Hill, CA 95037-9024

(d) Mr. Rodney Nichols
Spencer Fane LLP
2144 E. Republic Road, Ste. B300
Springfield, MO 65804-4880

(d) Richard Campbell
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Morgan Hill, CA 95037-9024

End of Label Matrix	
Mailable recipients	76
Bypassed recipients	4
Total	80